

## Message Text

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ORIGIN COME-00

INFO OCT-01 EUR-25 ISO-00 L-03 AID-20 CEA-02 CIAE-00 EB-11

EA-11 FRB-02 INR-10 IO-13 NEA-10 NSAE-00 RSC-01

OPIC-12 SPC-03 TRSE-00 CIEP-02 LAB-06 SIL-01 OMB-01

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DRAFTED BY COMMERCE - CHSULLIVAN

9/11/73

APPROVED BY EUR/RPE - MLEVINE

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L/EB - LPRESSLER (SUBS)

EUR/RPE - FKINNELLY

TREASURY - RANDERSON

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FM SECSTATE WASHDC

TO USMISSION OECD PARIS PRIORITY

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E.O. 11652: N/A

TAGS: EFIN, OECD

REF: (A) DAF/AS/72/113, (B) DAF/AS/73/4, (C) DAF/AS/73/14,

(D) DAF/AS/73/15, (E) OECD A-139, (F) OECD 17710

SUBJ: INSURANCE COMMITTEE WORKING PARTY ON WINDING-UP AND  
PREFERENTIAL CLAIMS

1. QUESTIONNAIRE AND OTHER REQUESTS FOR INFORMATION ON US  
INSURANCE LAWS AND PRACTICE (REF A-F) RAISE SPECIAL PRO-  
BLEMS FOR US, AS EXEMPLIFIED IN ANNEX C TO CODE OF LIBER-  
ALIZATION OF INVISIBLES. BECAUSE THE FEDERAL GOVERNMENT  
HAS NO RESPONSIBILITY FOR THE REGULATION OF INSURANCE  
THERE IS NO SINGLE COMPREHENSIVE REGULATORY STATUTE THAT  
COULD PROVIDE EXPLICIT ANSWERS TO THESE REQUESTS IN MANA-  
GEABLE FORM. REGULATION OF INSURANCE IS VESTED IN THE  
SEPARATE STATES, WHICH MEANS 52 JURISDICTIONS, THE 50 STA-  
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TES, D.C., AND PUERTO RICO. THEY REGULATE INSURANCE IN

ACCORDANCE WITH THEIR OWN EXPERIENCE AND CONCEPTS OF LOCAL NEEDS. CONSEQUENTLY EVEN THOUGH STATE REGULATIONS TEND TO FOLLOW MUCH THE SAME GENERAL PATTERN, THERE ARE NUMEROUS DIFFERENCES OF DETAIL AND APPROACH.

2. ANY ATTEMPT TO PROVIDE THE REQUESTED INFORMATION WOULD REQUIRE EXAMINATION AND ANALYSIS OF STATE LAWS, REGULATIONS, ADMINISTRATIVE PROCEDURE AND JURISPRUDENCE. MOREOVER, SUCH ANALYSIS WOULD NOT BE AUTHORITATIVE UNLESS REVIEWED AND ENDORSED BY THE COMPETENT STATE AUTHORITIES. EXPERIENCE

IN OTHER AREAS HAS SHOWN THAT OBTAINING INFORMATION FROM STATE AUTHORITIES ON DETAILED MATTERS OF SOME LEGAL COMPLEXITY, AS IN THE PRESENT CASE, IS DIFFICULT AND TIME-CONSUMING. THE INFORMATION SUPPLIED IS OFTEN NEITHER UNIFORM OR FULLY RESPONSIVE.

3. THIS DIFFICULTY EXTENDS TO QUESTIONS ON COURT JURISDICTION IN INSURANCE MATTERS. FOR EXAMPLE IT IS NOT POSSIBLE TO

DEAL  
ADEQUATELY WITH POSSIBLE CONFLICT OF LAWS QUESTIONS.

4. EVEN IF THE REQUESTED INFORMATION WERE PROVIDED IT WOULD BE SO COMPLEX AND DIFFICULT TO EVALUATE IN COMPARISON WITH LEGAL PROCEDURES PREVAILING IN EUROPE THAT IT WOULD APPEAR TO BE OF LITTLE PRACTICAL VALUE TO THE MEMBER COUNTRIES INTERESTED IN THESE ISSUES. IF, HOWEVER, THE OECD SECRETARIAT WOULD FIND IT USEFUL TO HAVE SOME IDEA OF THE GENERAL NATURE OF US LAW AND PRACTICE IN THESE AREAS AS A BASIS FOR COMPARISON AND IN ORDER TO UNDERSTAND MORE FULLY THE MAGNITUDE OF PROBLEM, IT COULD OBTAIN BASIC INFORMATION FROM PRIVATELY PUBLISHED SOURCES OF RECOGNIZED COMPETENCE, PARTICULARLY SUCH MAJOR LEGAL TREATISES AS APPLEMAN ON INSURANCE LAW AND PRACTICE OR COUCH'S CYCLOPEDIA OF INSURANCE LAW (2ND EDITION).

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5. ONE OECD OBJECTIVE IS THE DEVELOPMENT OF AN INTERNATIONAL CONVENTION ON TERRITORIAL JURISDICTION OF COURTS IN MATTERS OF INSURANCE, WHICH WOULD PROVIDE FOR THE RECOGNITION AND ENFORCEMENT OF JUDGEMENTS (REF.F). BECAUSE OF THE COMPLEX INTERRELATIONSHIP OF STATE AND FEDERAL JURISDICTION, THE US HAS NOT ENTERED INTO ANY TREATY OR OTHER AGREEMENT WHICH WOULD ATTEMPT TO DEFINE JURISDICTION OR TO PRESCRIBE RULES WITH RESPECT TO

THE RECOGNITION OF JUDGEMENTS THAT WOULD BE BINDING UPON THE STATES. IT HAS BEEN CONSIDERED THAT TO DO SO WOULD BE AN IMPROPER EXERCISE OF THE TREATY POWER AND AN INTERFERENCE WITH STATE PREROGATIVES IN IMPORTANT AREAS AFFECTING PRIVATE RIGHTS WHERE THE STATES TRADITIONALLY HAVE EXERCISED A SUBSTANTIAL MEASURE OF JURISDICTION- IT IS NOT SEEN HOW THE US COULD BECOME A PARTY TO ANY SUCH CONVENTION. THE MOST THE US HAS DONE BY TREATY IN THIS AREA HAS BEEN TO PROVIDE IN FCN TREATIES THAT FOREIGN NATIONALS SHALL HAVE FREE ACCESS TO US COURTS IN ALL DEGREES OF JURISDICTION IN PURSUIT AND DEFENSE OF THEIR RIGHTS.

6. MISSION ALSO REQUESTED US VIEWS ON POSSIBILITY US ACCEPTANCE MULTILATERAL CONVENTION ON INSURANCE TO REGULATE THE OPERATIONS OF ALIEN INSURANCE COMPANIES (REF. F). FROM THE STANDPOINT OF THE US SUCH A CONVENTION WOULD HAVE THE EFFECT OF INJECTING FEDERAL AUTHORITY INTO AN IMPORTANT AREA OF STATE REGULATION AND PROVIDING IN EFFECT A DIFFERENT REGULATORY REGIME FOR ALIEN COMPANIES THAN FOR LOCAL AND OUT-OF-STATE US COMPANIES. AS A PRACTICAL MATTER SUCH A REGIME COULD BE MADE APPLICABLE ONLY BY FORCING THE STATES TO APPLY RULES TO WHICH THEY HAVE NOT CONSENTED AND WHICH MIGHT BE CONTRARY TO THEIR OWN REGULATORY CONCEPTS OF PUBLIC POLICY OR BY CREATION OF A NEW FEDERAL AGENCY FOR THE SOLE PURPOSE OF REGULATING ALIEN COMPANIES.

7. THERE IS LITTLE QUESTION THAT THE US WOULD NOT BE ABLE TO ACCEPT ANY SUCH CONVENTION. FROM THE STANDPOINT OF THE US MOREOVER, THE PRACTICAL VALUE OF SUCH A CONVENTION IS QUESTIONABLE. ALIEN COMPANIES OPERATE FREELY AND PROFITABLY IN THE US UNDER CONDITIONS OF COMPETITIVE EQUALITY

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AND SUBJECT TO THE SAME REGULATORY RULES AS US COMPANIES. MANY DO BUSINESS IN ALL 50 STATES AND D.C. IN FACT THE US OPERATIONS OF SOME ALIEN COMPANIES, E.G., SUN LIFE OF CANADA, ROYAL-GLOBE, ARE SO EXTENSIVE THAT THEY MUST BE CONSIDERED MAJOR ENTERPRISES BY ANY STANDARD. RUSH

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